

**REMARKS**

Claims 1-57 are pending in this application.

Claims 1-33 and 40-59 were rejected by the Examiner under 35 U.S.C. § 103 as obvious in view of Postrel U.S. Patent No. 6,594,640 and Copple et al. U.S. Patent No. 6,178,408. Claims 34-39 were rejected under 35 U.S.C. § 103 as obvious in view of Postrel, Copple et al. and Bezos et al. U.S. Patent No. 6,606,608.

Applicants submit herewith a declaration of Jonathan Ellenberg and Josh Nabozny Under 37 C.F.R. § 1.131 ("the Rule 131 Declaration) showing facts which, in character and weight, establish a conception of the present invention prior to the apparent effective dates of Postrel, Copple et al. and Bezos et al. of June 23, 1999, July 14, 1999 and July 19, 1999, respectively, and due diligence from prior to those dates until the reduction to practice of the invention. As requested by the Examiner, the declaration: (1) states that the invention was made in the United States; (2) is accompanied by corroborative exhibits; and (3) sets forth facts establishing a reduction to practice of the invention.

Also submitted herewith is a Petition Under 37 C.F.R. § 1.47(a) to accept the Rule 131 Declaration without the signature of Josh Nabozny one of the two joint inventors of the subject matter of the application. Inventor Nabozny does not respond to repeated requests for him to execute the Rule 131 Declaration, following diligent efforts to reach him and to request that he sign this document, as detailed in the accompanying Statement of Facts. Therefore, inventor Ellenberg is signing the Rule 131 Declaration on his own behalf and also on behalf of the non-signing inventor Nabozny in accordance with 37 C.F.R. §1.47(a).

Alternatively, for the reasons set forth below, the claims are not rendered obvious in view of Postrel, Copple et al. and Bezos et al.

Postrel teaches a system and method for bartering, trading and redeeming points accumulated in customer affinity programs. Postrel Abstract. The system includes a trading server computer 20 in communication with reward server computers 10, 12, 14, a merchant computer 30 and a user computer 40. Postrel Fig. 4; col. 5, l. 3-6. The trading server computer allows the user to accumulate customer affinity program points posted on the various reward server computers and use them to make purchases from the merchant. Postrel Figs. 4, 6; col. 5, l. 17-20, col. 6, l. 12-52. The number of customer affinity program points expended by the user to make a purchase are deducted from the user's accounts in the reward server computers. Postrel Fig. 6, col. 6, l. 35-37. The reward server computers then convey consideration corresponding to the customer affinity program points expended to the trading server computer. Postrel Fig. 6, col. 6, l. 40-52.

Copple et al. addresses redeeming points collected through the purchase of products. Copple et al. col. 1, l. 20-33. A customer may use points collected to bid for promotional items. However, the customer's bid cannot exceed the number of points collected. Copple et al. col. 5, l. 13-20.

Bezos et al. teaches an auction system having a mechanism to allow a winning bidder to receive a discount from the winning bid amount when certain discount criteria are met. Bezos et al. Abstract, col. 2, l. 64-col. 3, l. 12. Bezos et al. does not address setting an opening bid amount.

The claims are not obvious in view of those teachings. Postrel does not disclose the subject matter of the independent claims, i.e. a customer affinity program auction where: (a) reward points are used to bid on merchandise offered in the auction (independent claims 1, 12 and 23), (b) an opening bid is determined in reward points (independent claims 34, 36 and 38), or

(c) a portion of a bid is paid for by reward points (independent claims 40, 46 and 52). See September 23, 2004 Office Action at 2, “Response To Arguments.” The patents to Copple et al. and Bezos et al. add little to Postrel in these regards.

Specifically, claims 34 and 35 recite a method of conducting a customer affinity program auction where a minimum opening bid amount is determined by applying an auction pricing discount factor in reward points; claims 36 and 37 recite a central controller constructed to determine such an opening bid; and claims 38 and 39 recite a computer readable medium having code to allow for determining such an opening bid. The teachings of Bezos et al. relied on by the examiner in this regard relate to providing a discount to the winning bidder. Bezos et al. Abstract, col. 2, l. 64-col. 3, l. 23, col. 5, l. 43-50. Thus, Bezos et al. does not disclose determining a minimum opening bid price by applying an auction pricing discount factor in reward points based on the merchandise being auctioned and the time period of the auction as claimed in claims 34-39.

Claims 40-45 recite a method of conducting a customer affinity program auction where a portion of a bid is paid for by reward points converted to a cash value; claims 46-51 recite a central controller constructed to accept such a payment; and claims 52-57 recite a computer readable medium having code to allow for accepting such a payment. The teaching of Postrel relied on by the examiner in this regard relate to conveying of consideration between the reward server computers and trading server computer after the customer has used customer affinity program points to make a purchase. Postrel col. 6, l. 35-52. Thus, Postrel does not disclose “receiving a bid in cash from a customer ... wherein at least a portion of the bid is paid for by rewards points connected to a cash value” as claimed in claims 40-57.

Dependent claims 7-9 and 11 recite a method of conducting a customer affinity program auction where a bid on merchandise offered in the auction is received in reward points and the customer can purchase additional reward points for use in the auction; dependent claims 18-20 and 22 recite a central controller constructed to perform those functions; and dependent claims 29-31 and 33 recite a computer readable medium having code to allow for those functions to be performed. Again, the teachings of Postrel relied on by the examiner relate to conveying of consideration between the reward server computers and trading server computer after the customer has used customer affinity program points to make a purchase. Postrel col. 6, l. 35-52. Thus, Postrel does not disclose purchasing rewards points at an exchange rate or at a floating rate as claimed in claims 7-9, 11, 18-20, 22, 29-31 and 33. Moreover, Copple et al. actually teaches away from the claimed invention. Copple et al. teaches that the customer's bid cannot exceed the number of points collected. Copple et al. col. 5, l. 13-20. The invention as claimed in claims 7-9, 11, 18-20, 22, 29-31 and 33 would allow a customer to place a bid on merchandise in points in excess of the balance of points in his account. See, e.g., specification pages 13, 15.

Therefore, the pending claims in the application are not rendered obvious in view of Postrel, Copple et al. and Bezos et al.

### **CONCLUSION**

Based on the foregoing remarks, it is respectfully submitted that the claims as currently pending are patentable and in condition for allowance. If any issues remain, or if the Examiner has any suggestions for expediting allowance of this application, he is respectfully requested to contact the undersigned at the telephone number listed below. Favorable consideration is respectfully requested.


**AUTHORIZATION**

The Commissioner is hereby authorized to charge any additional fees which may be required for the timely consideration of this amendment under 37 CFR §§ 1.6 and 1.17, or credit any overpayment to Deposit Account No. 13-4500, Order No. 3951-4001.

Respectfully submitted,  
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Dated: January 24, 2005

By: \_\_\_\_\_

  
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